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No. 80-434

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

SMITHKLINE CORPORATION, *Petitioner,*

v.

ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES, AND THE UNITED STATES, *Respondents.*

On Conditional Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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REPLY OF PETITIONER

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REPLY OF PETITIONER

Ultimately the question presented here is the efficient utilization of limited judicial resources. It is undisputed that this case, in addition to *Merck & Co.* v. *Staats,* No. 80-416 (filed Sept. 16, 1980), and *Staats* v. *Bristol Laboratories,* No. 80-214 (filed Aug. 21, 1980), all arise from identical demands made by the General Accounting Office at the same time, for the same purpose and as parts of the same inquiry. The cases differ merely in that, unlike *SmithKline* and *Merck, Bristol* presents only one aspect of the issues arising from the controversy with GAO, and a decision by this Court in *Bristol* cannot resolve the remaining issues presented in the other two cases.

In these circumstances, considerations of sound judicial administration indicate strongly that this case and *Merck* should, if the Court were to grant certiorari in *Bristol,* also be resolved at the same time.

This case is now pending before the Third Circuit, while *Merck* is now before the District of Columbia Circuit, and there is nothing in law or logic to dictate that this Court and two courts of appeals should simultaneously be burdened with interrelated aspects of a single controversy. The inefficiency of such an arrangement is compounded by the genuine possibility that the *SmithKline* and *Merck* courts might differ in their results from each other or from other previous decisions, thus stimulating one or more additional petitions for certiorari and still further proceedings in this Court.[1]

The wastefulness of the existing situation may be alleviated by either of two steps. This Court may, as we urged in the conditional petition, deny certiorari in *Bristol* and await the results of the two pending proceedings in the courts of appeals. As we explained in the petition, the result reached by the Second Circuit on the limited issue before it in *Bristol* is, in any event, clearly correct. Alternatively, if the Court were nonetheless to grant certiorari in *Bristol,* it might still resolve all these cases at one time and in a single decision by also granting the conditional petitions here and in *Merck*. This would eliminate both needless proceedings in the courts of appeals and the prospect of further burdens on this Court.

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[1] While it is true that no conflict among circuits now exists on the broader issues presented here and in *Merck*, but not in *Bristol*, the only court of appeals yet to have decided those issues in the five cases arising from GAO's demands is the Seventh Circuit, and, as we have pointed out in the conditional petition, the judges of that court divided in the two cases before them, with the panel in *United States* v. *Abbott Laboratories*, 597 F.2d 672 (7th Cir. 1979), only reluctantly following that court's earlier decision in *Eli Lilly & Co.* v. *Staats*, 574 F.2d 904 (7th Cir.), *cert. denied*, 439 U.S. 959 (1978). Even if the circuits are not yet divided, the judges of the single circuit to have confronted the issues are already in disagreement.

The consolidation of all three cases for a single hearing would have another important advantage. Such a step would bring before the Court all of the issues of statutory construction raised by the access-to-records provisions at one time, in a proceeding in which all those interrelated issues could be resolved simultaneously, each in light of the others. Further, it would assure presentation to the Court of all of the pertinent legislative and administrative history of the access provisions, a presentation which it cannot be assumed will be made by the parties in *Bristol,* because of the narrow question there involved. The incomplete extracts from that history offered by respondents in their brief in opposition to the petition only confirm the importance of a more comprehensive presentation to the Court.

CONCLUSION

For reasons stated above and in the conditional petition for certiorari, certiorari in *Staats* v. *Bristol Laboratories,* No. 80-214, should be denied. Alternatively, if certiorari were to be granted there, it should also be granted in this case.

Respectfully submitted,

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